

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

Joe R. Blurton,)	
)	
Plaintiff,)	Case No. 3:10-cv-96
)	
-vs-)	ORDER ADOPTING REPORT AND
)	RECOMMENDATION
Paul Laney, Cass County Sheriff, Birch)	
Burdick, Cass County States Attorney,)	
Cherie Clark, Cass County Assistant States)	
Attorney, all in their official and individual)	
capacities,)	
)	
Defendants.)	

The Court has received a Report and Recommendation from the Honorable Karen K. Klein, United States Magistrate Judge, pursuant to 28 U.S.C. § 636, recommending that Plaintiff Joe R. Blurton's Complaint be dismissed with prejudice as to the claims against Birch Burdick and Cherie Clark (Doc. #12). As to the claims against Paul Laney, the magistrate judge recommends that the claims be dismissed with prejudice with the exception of Blurton's claims against Laney regarding the loss of personal property and the denial of legal mail. Id. Finally, the magistrate judge recommends that Blurton's request for injunctive or declaratory relief be dismissed with prejudice. Id. Blurton timely filed objections to the Report and Recommendation (Doc. #17).

In response to the Report and Recommendation, Blurton maintains that he is not attacking the validity of the conviction, but the pre-trial incarceration without a warrant, probable cause determination, judicial review, or "oath or affirmation." (Doc. #17). Blurton requests that Sheriff Paul Laney be dismissed without prejudice. Id. at p. 3. In addition, Blurton seeks "prospective relief" as noted in his amended complaint. Id. at p. 4. According to

Blurton's objections, the proposed amended complaint seeks to add Gary Delorme and Reid Brady, Cass County Assistant States Attorneys, in their individual capacity. Id. at p. 6. Blurton also renews his motion for the appointment of counsel. Id.

None of Blurton's "objections" raise any meritorious issues. Blurton was arrested in Ramsey County on September 2, 2007. He was transferred to Cass County and brought before the court for an arraignment on September 6, 2007. Blurton waived his right to a preliminary hearing. State v. Blurton, 2009 ND 144, 770 N.W.2d 231. Blurton was promptly brought before the court, advised of the charges against him, and waived his right to a preliminary hearing. The Court finds Blurton's "objections" regarding the dismissal of his claim for unlawful detention lack merit.

As to Blurton's objections regarding claims presented in the proposed amended complaint, the magistrate judge invited Blurton to submit an amended complaint on certain incomplete claims and has not yet conducted an initial review as to those claims. The Court thus finds these claims are not yet ripe for review by the undersigned judge.

After considering the Report and Recommendation, conducting a *de novo* review of Blurton's objections, and reviewing the entire file, the Court finds the Magistrate Judge's position is correct. Accordingly, the Court hereby adopts the Report and Recommendation in its entirety. For the reasons set forth therein, all claims against Birch Burdick and Cherie Clark are **DISMISSED with prejudice**. Further, all claims against Paul Laney, except for the claims regarding denial of legal mail and lost or stolen property, are **DISMISSED with prejudice**. All claims for injunctive or declaratory relief are **DISMISSED with prejudice**.

Finally, Blurton has adequately presented his claims. Blurton's renewed motion for the

appointment of counsel is **DENIED**.

IT IS SO ORDERED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 3rd day of May, 2011.

/s/ Ralph R. Erickson
Ralph R. Erickson, Chief Judge
United States District Court